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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/035,324	01/04/2002	H. William Bosch	029318-0107	2223

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EXAMINER

WEBMAN, EDWARD J

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 08/31/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



## UNITED STATES DEPARTMENT OF COMMERCE

## Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 2023110/035324  
APPLICATION NUMBER

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FIRST NAMED APPLICANT

ATTY. DOCKET NO.

EXAMINER

ART UNIT

PAPER NUMBER

8/9/04

DATE MAILED:

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

## OFFICE ACTION SUMMARY

☐ Responsive to communication(s) filed on 7/29/04☐ This action is **FINAL**.☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

- ☒ Claim(s) 1-34 is/are pending in the application.  
Of the above, claim(s) 15-34 is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-14 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- ☐ Notice of Reference Cited, PTO-892
- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2/18/02, 3/19/02, 11/14/03
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

-SEE OFFICE ACTION ON THE FOLLOWING PAGES--

Applicant's election with traverse of I, Benzalkonium chloride and crystalline in the reply filed on 7/29/04 is acknowledged. The traversal is on the ground(s) that there is no undue burden. This is not found persuasive because burden is shown by the classification of the inventions in entirely different classes.

The requirement is still deemed proper and is therefore made FINAL.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 8-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Wiedemann et al.

Wiedemann et al teach nanoparticles of Bellomethazone having a surface modifier absorbed thereon (abstract), tyloxapol is disclosed (column 3 line 2), particles less than 100nm are specified (column 6 lines 9-11). 0.1-90% surface modifier is disclosed (claim 1). Auxiliary surface modifiers are specified (column 5 line 1). The dipropionate is disclosed (column 2 line 8).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiedemann et al in view of Czekai et al.

Wiedemann et al is discussed above.

Czekai et al teach grinding of pharmaceutical substances (title) sizes of 35 nm  
are specified (column 5 lines 33-39).

It would have been obvious to one of ordinary skill to use the method of Czekai et al to make the particles of Wiedemann et al to achieve the beneficial effect of smaller particles.

No claims allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward Webman whose telephone number is (571) 272-0633. The examiner can normally be reached on Monday to Friday 9 Am 5 PM.

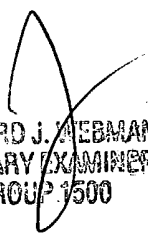
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Padmanabhan can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Art Unit: 1617

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Webman/LR  
August 10, 2004



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